

DDG  
JFL

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Castiglione della Pescaia  
58043 GR Italy

Commissioner for Patents  
Customer Service  
401 Dulaney Street  
Alexandria, VA 22314 USA

August 13<sup>th</sup> 2007

Re: Application No. **9/866,652** Art Unit: **3691**  
Examiner: **Hani M. Kazimi** Petition Under 37 CFR 1.137(a)  
**Unavoidable Abandonment**

Dear Sir/Madam,

Enclosed please find the below described materials relating to the above identified application for U.S. Patent in the name of Tommaso Innocenti:

- (1) Cheque in the amount of \$250 payable to the Office Director in payment of the filing fee specified under 37 CFR 1.17(l).
  - (2) Letter of Transmittal on: 1 sheet;
  - (3) Petition Under 37 CFR Section 1.137(a) on: 4 sheets;
  - (4) Original Reply to Board Decision inclusive of: Letter of Transmittal, Certificate of Transmission, Submission of Amendment to the Claims Under 37 CFR 41.50(b) Reopening Prosecution, & Amendment Under 37 CFR 41.50(b): Remarks & Claims Listing on: 23 sheets;
  - (5) Copy of Notice of Abandonment on: 2 sheets;
- Total: (1) cheque & 30 sheets.

Please file the above described materials in the above identified application for patent and thank you kindly for your service.

Respectfully yours,

*Peter O'D. Gibson, Reg. #34,605*

Peter O'D. Gibson, Reg. #34,605



DAC-18

Peter O'Donovan Gibson  
Via del Muschio 12, Int. 2  
58043 Castiglione d. Pescaia (GR) Italy

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia (VA) 22313-1450

April 23<sup>rd</sup> 2007

Re: Application No. **09/866,652**  
Appeal: **2007-0366**  
Technology Center **3600**  
*In Re* Tommaso **Innocenti**

Dear Sir/Madam,

Following please find the below described materials relating to the above identified application for patent under appeal:

- |    |   |            |
|----|---|------------|
| 1. | Letter of Transmittal on:   | 1 sheet;   |
| 2. | Certificate of Facsimile Transmission on:   | 1 sheet;   |
| 2. | 'Submission of Amendment to the Claims Under 37 CFR 41.50(b) Reopening Prosecution' on: | 8 sheets;  |
| 3. | 'Amendment Under 37 CFR 41.50(b): Claims – Remarks' on:                                 | 2 sheets;  |
| 4. | 'Amendment Under 37 CFR 41.50(b): Claims Listing' on:                                   | 11 sheets; |

Total: 23 sheets.

Please file the above listed materials in the above identified application for patent under appeal and thank you kindly for your service;

Respectfully yours,

*Peter Gibson, Reg. #34,605*

Peter Gibson, Reg. #34,605

TO ~~did not receive the following~~  
Item(s) received as is

Ph./Fax: 39 0564 93 6500

Application No. **09/866,652**  
Filed May 30<sup>th</sup> 2001

Applicant: **Tommaso Innocenti**  
Customer No. 53373



**PETITION UNDER 37 CFR SECTION 1.137(a)**

5. Petitioner respectfully submits that it was initially thought that the submission under 37 CFR 41.50(b) must have been misplaced by the Office when a Notice of Abandonment, copy enclosed, was received by Applicant's representative who immediately called the examiner identified thereon and left a message indicating that a proper reply to the decision by the Board of Appeals and Interferences rendered on 23 February 2007 had been timely filed by facsimile on 23 April 2007.

6. Petitioner respectfully submits that this Notice of Abandonment cites, as the sole reason for abandonment, that:

This application is abandoned in view of:

6. The decision by the Board of Appeals and Interferences rendered on 23 February 2007 and because the period for seeking court review of the decision has expired and there are no allowed claims. (Notice of Abandonment dated 7 June 2007, p. 2);

which reason does not admit of the option of submitting an amendment to the claims reopening prosecution under 37 CFR 41.50(b) thus erroneously, on the part of the Office, rendering moot the submission identified above timely filed by facsimile transmission further enclosed here in the original for entrance in reopening prosecution in accordance with the Rules.

continued



Application No. **09/866,652**  
Filed May 30<sup>th</sup> 2001

Applicant: **Tommaso Innocenti**  
Customer No. 53373

**PETITION UNDER 37 CFR SECTION 1.137(a)**

1. Applicant and petitioner in the above identified application for U.S. Utility Patent respectfully petitions the Commissioner of Patents under 37 CFR 1.137(a) to revive said application from abandonment for unavoidable delay due to error on the part of the Office evident in the Notice of Abandonment in said application, copy enclosed on two sheets, in failing to recognize that a decision by the Board of Appeals containing new grounds of rejection may properly be responded to under 37 CFR 41.50(b) in submission of amendment to the claims reopening prosecution.

2. Petitioner respectfully submits, in accordance with 37 CFR 1.137(a)(1) & (2), respectively, that:

- a. the original "reply": i.e. 'Submission of Amendment to the Claims Under 37 CFR 41.50(b) Reopening Prosecution' on 23 sheets; "to the outstanding Office action or Notice"; and
  - b. the fee specified under 37 CFR 1.17(l);
- are both enclosed.

3. Petitioner respectfully submits, in accordance with 37 CFR 1.137(a)(3), that the entire delay in the present filing, as further explained directly below, from the due date for the reply to the Board Decision was unavoidable.

continued

Application No. 09/866,652  
Filed May 30<sup>th</sup> 2001

Applicant: Tommaso Innocenti  
Customer No. 53373



**PETITION UNDER 37 CFR SECTION 1.137(a)**

7. Petitioner respectfully submits that submission of amendment to the claims reopening prosecution under 37 CFR 41.50(b) comprises a perfectly valid reply to a decision by the Board of Appeals containing new grounds of rejection, but as the only reason given for abandonment cites only the Board decision and expiration of the period for seeking court review, the Office evidently erred in viewing this decision by the Board of Appeals as not containing new grounds of rejection hence resulting in an erroneous abandonment on the part of the Office.

8. Petitioner respectfully submits that all the requirements of 37 CFR 1.137(a) have been met herein and respectfully requests revival of the present application, entrance of the enclosed original submission under 37 CFR 41.50(b) timely filed by Applicant by facsimile transmission 23<sup>rd</sup> April 2007 but erroneously rendered moot as a valid alternative to seeking court review where the decision by the Board of Appeals and Interferences contains new grounds of rejection thus rendering, by error on part of the Office, the present abandonment and the delay in filing said submission both wholly unavoidable.

Respectfully yours,

*Peter O'D. Gibson, Reg. # 34,605*

Peter O'D. Gibson, Reg. #34,605



Application No. 09/866,652  
Filed May 30<sup>th</sup> 2001

Applicant: Tommaso Innocenti  
Customer No. 53373

### PETITION UNDER 37 CFR SECTION 1.137(a)

4. Petitioner respectfully submits that the enclosed original reply to the Board decision of February 23<sup>rd</sup> 2007 in Appeal 2007-0366, a submission under 37 CFR 41.50(b) of amendment to the claims reopening prosecution, was wholly proper as said decision introduced a new ground of rejection:

#### CONCLUSION

We consider the Examiner's rejection of 53 through 64 under 35 U.S.C. (Section) 112, second paragraph to be proper and sustain this rejection. However, we consider the Examiner's rejection of claims 40 through 52, and 65 through 76 under 35 U.S.C. (Section) 112, second paragraph, to be in error and we reverse this rejection. Similarly, we consider the Examiner's rejections of claims 40 through 76 under 35 U.S.C. (Section) 103(a) to be in error as we do not find that the combination of the references cited by the Examiner teach or suggest providing on a web site, a proposal format which allows a buyer of a commodity to specify a type of auction and present the buyer with an option which allows the buyer to provide a model indicating the quality desired as claimed.

We also enter new grounds of rejection against claims 40 through 76 under 35 U.S.C. (Section) 101.

***This decision contains a new ground of rejection pursuant to 37 CFR (Section) 41.50(b) ... (which) provides '[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.'*** (emphasis added, pp. 19–20); and

that said submission was timely filed on April 23<sup>rd</sup> 2007 by facsimile transmission.

Application No. 09/866,652  
Appeal 2007-0366  
Technology Center 3600  
*In Re* Tommaso Innocenti



**IN THE UNITED STATES PATENT OFFICE**

**Certificate of Facsimile Transmission**

I, Peter Gibson, Reg. #34,605, Customer No. 53,373, do hereby certify with my dated signature below that the below described materials in the above identified appealed application for patent in the name of Tommaso Innocenti are being transmitted today, April 23<sup>rd</sup> 2007, to the central facsimile number of the United States Patent Office: 571/273-8300.

*Peter Gibson, Reg. #34,605*      *April 23<sup>rd</sup> 2007*

Peter Gibson, Reg. #34,605

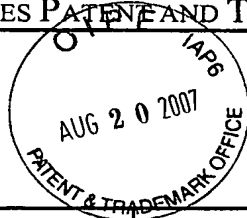
April 23<sup>rd</sup> 2007

**Description of Materials Transmitted**

- |                   |   |            |
|-------------------|---|------------|
| 1.                | Letter of Transmittal on:   | 1 sheet;   |
| 2.                | Certificate of Facsimile Transmission on:   | 1 sheet;   |
| 2.                | 'Submission of Amendment to the Claims Under 37 CFR 41.50(b) Reopening Prosecution' on: | 8 sheets;  |
| 3.                | 'Amendment Under 37 CFR 41.50(b):<br>Claims – Remarks' on:                              | 2 sheets;  |
| 4.                | 'Amendment Under 37 CFR 41.50(b):<br>Claims Listing' on:                                | 11 sheets; |
| Total: 23 sheets. |   |            |



# UNITED STATES PATENT AND TRADEMARK OFFICE



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,652	05/30/2001	Tommaso Innocenti		5784

53373 7590 07/06/2007  
GIBSON, PETER O'DONOVAN  
VIA DEL MUSCHIO 12, INT. 2  
CASTIGLIONE D. PESCAIA, 58043  
ITALY

EXAMINER

KAZIMI, HANI M

ART UNIT PAPER NUMBER

3691

MAIL DATE DELIVERY MODE

07/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.





# Notice of Abandonment

Application No.

09/866,652

Examiner

Hani Kazimi

Applicant(s)

INNOCENTI, TOMMASO

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing of Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 23 February 2007 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

Hani M. Kazimi  
Primary Examiner  
Art Unit: 3691

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION**

**A. Review of Decision *in re* Tommaso Innocenti**

***35 U.S.C. Section 112***

1. Appellant respectfully submits that the Board:
  - a. decided for Appellant in regard to the definiteness of base claim 40: "we find for the Appellant and hold that claim 40 is definite" (p. 6);
  - b. identified language from the present specification comprising a limitation overcoming the indefiniteness of the phrase, 'may choose' in claims 53, 54, 57, 59, 60 and 63: "From Appellant's specification it appears that Appellant may have intended the limitation 'may choose' to mean 'is presented with a choice to select.'" (p. 7).

***35 U.S.C. Section 103(a)***

2. Appellant respectfully submits that the Board found for the Examiner in regard to the issue of Lerner comprising prior art but found for the Appellant in regard to rejection in view of Lerner and Moshal: "We do not find that the combination of Lerner and Moshal teaches the imitations directed to providing the option of provision of a model and providing the option of provision of a sample as claimed." (p. 12) and hence while Lerner is prior art, the Board finds:

for the Appellant on this issue and will not sustain the Examiner's rejection of independent claim 40 and dependent claims 41, 43, 46, through 49, 52 through 54, 56, 57, 59, 60, 62 and 63 which are similarly rejected over the combination of Lerner and Moshal. (p. 13)

**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION - p. 2**

3. Appellant respectfully submits that the Board found for Appellant in regard to "Examiner's rejections under 35 U.S.C. Section 103(a) of dependent claims 42, 44, 45, 50, 51, 55, 58, 63 through 76." (p. 14) because:

As we have found that the combination of Lerner and Moshal does not teach all of the limitations of independent claim 40, the third issue is do the other documents recited in the Examiner's other rejections under 35 U.S.C. Section 103(a) teach the missing limitations. As discussed *supra*, we do not find that the passages cited by the Examiner in either the Microsoft Computer Dictionary, or Auction This article, teach or suggest provision of a sample or a model in an online auction. Further, we do not find that either Conklin or Thomas teaches or suggests a buyer providing models of a commodity to indicate to a seller the quality desired. (pp. 13-14)

***35 U.S.C. Section 101***

4. Appellant respectfully submits that the Board entered a new ground of rejection of claims 40 through 76 under 35 U.S.C. 101 as set forth in pages 14 through 17 replete with a number of judicial citations including *Corning v. Burden*: "It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . ." further stating that to satisfy 101 requirements "the claim must be for a practical application of the Section 101 judicial exception" including transformation "of an article or physical object to a different state" or producing "a useful, concrete and tangible result" (p. 17).

**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION – p. 3**

5. Appellant respectfully submits that while the Board concludes that no transformation is wrought by the presently claimed invention, at least partly because "transfer of ownership, (is) a legal abstraction, and does not require the transfer of physical possession" (p. 17), and although physical transfer of possession is implied by provision of a sample or model, the Board does "not find that a physical transformation of the sample or model occurs" (p. 18), still, "(T)he enquiry into whether a claim fails the statutory requirement of 35 U.S.C. 101, does not end because it is determined that (the) there is no transformation or reduction of an article to a different thing or state." as "it must (still) be determined if the claim provides a practical application that produces a useful, tangible and concrete result." (p.18).

6. Appellant respectfully submits that while the Board finds "no tangible result from the claimed method" it is further acknowledged by the Board that the Federal Circuit, reciting *State Street Bank*, also has held that:

The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to ... but on the essential characteristics of the subject matter, in particular its practical utility. (p.19)

continued

**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION – p. 4**

***Conclusion***

7. Appellant respectfully submits that the Board, with regard to rejection under 35 U.S.C. 112(b), sustains the rejection of claims 53 through 64 but reverses the rejection of claims 40 through 52 and 65 through 76 as considered to be in error and similarly find "Examiner's rejections of claims 40 through 76 under 35 U.S.C. 103(a) to be in error as":

we do not find that the combination of the references cited by the Examiner teach or suggest providing on a web site, a proposal format which allows a buyer of a commodity to specify a type of auction and present the buyer with an option which allows the buyer to provide a model indicating the quality desired as claimed. (pp. 19-20); and

further the Board enters new grounds of rejection of claims 40 through 76 under 35 U.S.C. 101 pursuant to 37 C.F.R. 41.50(b) which section further provides that these new grounds "shall not be considered final for judicial review" and that Appellant must, within two months of the date of the decision, either:

(1) reopen prosecution with submission of either appropriate amendment to the claims rejected or new evidence relating thereto, or both, for reconsideration by Examiner; or

(2) request a rehearing by the Board upon the same record; and

whereby the "decision of the examiner rejecting claims 40 through 76 is Affirmed-in-Part." (p. 21)

continued

**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION – p. 5**

**B. Submission of Amendment Overcoming Grounds of Rejection**

*Claim Language*

1. Appellant respectfully submits that an inadvertent error in present claim 40: repetition of the word "desired" instead of "offered" in description of a prospective seller's sample, inadvertently repeating language used to describe a prospective buyer's model; is corrected by the present amendment.

2. Appellant respectfully submits that the grounds of the only appealed rejection sustained by the Board: that of claims 53 through 64 under 35 U.S.C. 112, second paragraph:

We consider the Examiner's rejection of 53 through 64 under 35 U.S.C. Section 112, second paragraph to be proper and sustain this rejection. However, we consider the Examiner's rejection of claims 40 through 52, and 65 through 76 under 35 U.S.C. Section 112, second paragraph, to be in error and we reverse this rejection. Similarly, we consider the Examiner's rejections of claims 40 through 76 under 35 U.S.C. Section 103(a) to be in error as we do not find that the combination of the references cited by the Examiner teach or suggest providing on a web site, a proposal format which allows a buyer of a commodity to specify a type of auction and present the buyer with an option which allows the buyer to provide a model indicating the quality desired as claimed. (pp. 19-20);

are overcome by the present amendment in replacement of the phrase "may choose", in claims 53, 54, 57, 60, and 63, with language identified by the

**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION – p. 6**

Board: "is presented with a choice to select" (p. 7); in comprising a limitation from the specification comprised of definite language correctly surmised by the Board as that intended by the indefinite original claim phrasing.

***Claimed Subject Matter – 35 U.S.C. Section 101***

3. Appellant respectfully submits that the present amendment overcomes the grounds of rejection under 35 U.S.C. 101 by clarifying that the invention claimed provides for the conduct of an auction with a transformation of the state of physical goods: from possession by one party to possession by another party; and hence a useful, concrete, tangible result: sale of a lot of commodities under the terms, inclusive of delivery and payment, negotiated during the auction.

4. Appellant respectfully submits that the present amendment clarifies the presently claimed subject matter as one providing a useful, concrete and tangible result by clearly expressing the originally intended claimed subject matter as a judicially recognized exception to non-statutory subject matter under 35 U.S.C. 101, as opposed to an abstraction lacking "transformation or conversion of subject matter representative of or constituting physical activity or objects." (*State Street Bank & Trust Co. v. Signature Financial Group Inc.*, reciting from *In re Schraeder*, 22 F.3d, 30 USPQ2d 1455 (Fed. Cir. 1994))

**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION – p. 7**

5. Appellant respectfully submits that the present amendment overcomes the new grounds of rejection under 35 U.S.C. 101 by making explicit in base claim 40 the originally intended but originally implicit conduct of an auction by:

- a. deleting the word "business" preceding, and replacing "intended to facilitate" with 'enabling' after, the word "method", and inserting 'by auction' in between "trading" and "comprising" all in the preamble;
- b. inserting 'conducting a commodities auction by' in between the phrases beginning with "providing the option of the provision of a sample" and "posting upon said web site a listing";
- c. inserting: (i) 'sale of said lot with', (ii) 'inclusive of delivery and payment', (iii) 'in accordance with said terms', in the last clause of said base claim;

whereby the conduct of an auction resulting in the change of possession of physical commodity, and stipulated transport of the commodity, originally implicit, is made explicit in claim 40 now drawn clearly to transformation of the state of physical objects: the change of possession by sale through auction conducted in accordance with the claimed method.

6. Appellant respectfully submits that the present amendment makes explicit the auction including sale and stipulated transport of physical commodity by the claimed method hence overcoming the grounds of rejection thereof under 35 U.S.C. 101 for lack of a "tangible result" (p. 19).



**SUBMISSION OF AMENDMENT TO THE CLAIMS  
UNDER 37 CFR 41.50(b) REOPENING PROSECUTION – p. 8**

**C. Summary and Request for Allowance**

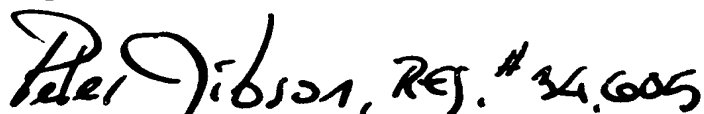
1. Appellant respectfully submits that the present amendment overcomes the grounds of the sole appealed rejection, under 35 U.S.C. 112 second paragraph of claims 53 through 64, sustained by the Board.

2. Appellant respectfully submits that the present amendment overcomes the grounds of the rejection under 35 U.S.C. 101 introduced by the Board by making explicit the 'tangible result' originally implicit in the sole base claim.

3. Appellant respectfully submits that the present reply inclusive of amendment: overcomes the grounds of all outstanding rejection, has been timely filed, is believed to eliminate all instances of indefinite language in the claims, is in full accordance with the Rules inclusive of 37 C.F.R. 41.50(b), and that no objections to the present application are outstanding.

4. Appellant respectfully submits, for all the reasons set forth above, that the present application is in full and proper condition for allowance which action is further respectfully and humbly requested.

Respectfully yours,

A handwritten signature in black ink that reads "Peter Gibson, Reg. #34,605". The signature is written in a cursive, flowing style.

Peter Gibson, Reg. #34,605

Telephone, Facsimile: 39 0564 93 6500

**AMENDMENT UNDER 37 CFR 41.50(b): Claims - Remarks – page 1**

Appellant respectfully submits that the present amendment under 37 C.F.R. 41.50(b) effects the changes described below, that all said changes are described, and that no new matter is introduced by amendment.

Claim **40** has:

1. the word "business" prior the word 'method' struck from the preamble;
2. "intended to facilitate" replaced with 'enabling' in the preamble;
3. 'by auction' inserted after "A ~~business~~ method ~~intended to facilitate~~ enabling flexible terms commodities trading" in the preamble to clarify that the intended trading is conducted by auction;
4. "desired" replaced by 'offered' twice in the step of "providing the option of provision of a sample of a particular commodity ... by a prospective seller" in rectification of inadvertent error;
5. 'category' inserted after "specific commodity" in the step of "providing, upon a web site ... for initiating an open offer";
6. 'conducting a commodities auction by:' inserted prior the step of "posting upon said web site ... when initiated by a prospective buyer" to clarify or that an auction of a lot of commodities, is conducted;

**AMENDMENT UNDER 37 CFR 41.50(b): Claims - Remarks – page 2**

7. "an" replaced with 'said' in between "scheduling" and "auction" to recognize proper antecedent basis in the clause beginning with "scheduling";
8. 'sale of said lot with' inserted prior, and 'inclusive of delivery and payment' inserted after "the matching in all said terms", 'in accordance with said terms added after "said specified lot" in the last clause to clarify that the auction is concluded with the sale of the lot specified in the auction when there is a match of all terms between an offer and a bid "both concerned with said specified lot".

Claim **41** has: 'sale of said lot with'; inserted between "said listing following" and "indication of the matching" to clarify that the specified lot is sold at auction before deposting of the listing;

In claims **53, 54, 57, 59, 60, and 63** the phrase "may choose" is replaced by 'presented with a choice to select' in accordance with the suggestion of the Board in elimination of the indefinite language in claims 53 – 64.

In claim **69** the word 'with' is inserted between "is provided" and "a proportion" in correction of a minor error in grammar.

In claim **75** the word 'with' is inserted between "is provided" and "a proportion" in correction of a minor error in grammar.

**AMENDMENT UNDER 37 CFR 41.50(b): Claims Listing – page 1**

**40. (currently amended)** A business method ~~intended to facilitate~~ enabling flexible terms commodities trading by auction comprising the steps of:

providing, upon a web site accessible upon the world wide web, a proposal format in which the type of auction can be specified in addition to the particular commodity, weight, price, and specific commodity category dependent quality characteristics desired by a prospective buyer in completion of a submission for initiating an open bid;

providing the option of provision of a model of a particular commodity desired for purposes of indicating the quality desired by a prospective buyer;

providing, upon a web site accessible upon the world wide web, a proposal format in which the type of auction can be specified in addition to the particular commodity, weight, price, and specific commodity category dependent quality characteristics offered by a prospective seller in completion of a submission for initiating an open offer;

providing the option of provision of a sample of a particular commodity ~~desired~~ offered for purposes of indicating the quality ~~desired~~ offered by a prospective seller;

conducting a commodities auction by:

posting upon said web site a listing for a specified lot of a particular commodity in accordance with a completed proposal submission detailing a plurality of terms including weight, price, quality characteristics, delivery and payment comprising an open offer of said specified lot when initiated by

**AMENDMENT UNDER 37 CFR 41.50(b): Claims Listing – page 2**

a prospective seller and comprising an open bid of said specified lot when initiated by a prospective buyer;

scheduling ~~an~~ said auction of said specified lot by posting a plurality of schedule dates including but not restricted to commencement and conclusion dates between which responses to said listing will be received;

posting upon said web site, in association with said listing, counter bids received in response to an open offer and counter offers received in response to an open bid which vary in any of the terms included in said plurality of terms detailed in said listing;

posting upon said web site, in association with said listing, any offer indications by said prospective seller in response to posted counter bids and any bid indications by said prospective buyer in response to posted counter offers signifying a modification of at least one term in said listing;

indicating upon said web site, in association with said listing, sale of said lot with the matching in all said terms inclusive of delivery and payment between any offer and any bid both concerned with said specified lot in accordance with said terms.

**41. (Currently Amended)** The business method of **claim 40** further including the step of deposting, upon said web site, said listing following sale of said lot with indication of the matching in all said terms between any offer and any bid both concerned with said specified lot.

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**42. (Original)** The business method of **claim 40** wherein said web site providing said proposal format in which the type of auction can be specified by a prospective buyer in completion of a submission for initiating an open bid is different than said web site providing said proposal format in which the type of auction can be specified by a prospective seller in completion of a submission for initiating an open offer.

**43. (Original)** The business method of **claim 40** wherein said web site providing said proposal format in which the type of auction can be specified by a prospective buyer in completion of a submission for initiating an open bid is the same as said web site providing said proposal format in which the type of auction can be specified by a prospective seller in completion of a submission for initiating an open offer.

**44. (Original)** The business method of **claim 40** further including the step of providing notification to subscribers of listings identified by commodity category as being of interest to said subscribers.

**45. (Original)** The business method of **claim 44** wherein said notification is provided by electronic means inclusive of e-mail.

**46. (Original)** The business method of **claim 40** wherein said web site providing said proposal format in which the type of auction can be specified by a prospective buyer in completion of a submission for initiating an open

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bid provides registration access means for registration of said prospective buyer with an auction house maintaining said web site.

**47. (Original)** The business method of **claim 46** wherein resistration of said prospective buyer requires payment of a fee to said auction house by said prospective buyer.

**48. (Original)** The business method of **claim 40** wherein said web site providing said proposal format in which the type of auction can be specified by a prospective seller in completion of a submission for initiating an open offer provides registration access means for registration of said prospective seller with an auction house maintaining said web site.

**49. (Original)** The business method of **claim 48** wherein registration of said prospective seller requires payment of a fee to said auction house by said prospective seller.

**50. (Original)** The business method of **claim 40** wherein said web site providing said proposal format in which the type of auction can be specified by a prospective buyer in completion of a submission for initiating an open

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bid provides directory access means for accessing a directory comprised of a plurality of commodity categories.

**51. (Original)** The business method of **claim 50** wherein an auction house maintaining said web site provides listings pertaining to a particular commodity category chosen from said plurality of commodity categories to said prospective buyer by subscription.

**52. (Original)** The business method of **claim 50** wherein said subscription requires payment of a fee by said prospective buyer to an auction house providing said listings.

**53. (Currently Amended)** The business method of **claim 40** wherein said prospective seller, in specification of the type of auction, ~~may choose~~ is presented with a choice to select upward, open, unconstrained bidding wherein said listing specifies an initial minimum price and bidding within the time between said commencement and conclusion dates is otherwise unconstrained with regard to price.



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**54. (Currently Amended)** The business method of **claim 40** wherein said prospective seller, in specification of the type of auction, ~~may choose~~ is presented with a choice to select upward, incremental, unconstrained bidding wherein said listing specifies an initial minimum price and bidding within the time between said commencement and conclusion dates is otherwise only constrained with regard to price by the progressive increase of the same in predetermined increments.

**55. (Original)** The business method of **claim 54** wherein said predetermined increments constraining said progressive increase of price are a function of time.

**56. (Original)** The business method of **claim 54** wherein said predetermined increments constraining said progressive increase of price are a function of the number or responses received.

**57. (Currently Amended)** The business method of **claim 40** wherein said prospective seller, in specification of the type of auction, ~~may choose~~ is presented with a choice to select downward, incremental, constrained bidding wherein said listing specifies an initial maximum price and bidding within the time between said commencement and conclusion dates is

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constrained with regard to price by the progressive decrease of the same in predetermined increments and by a predetermined minimum price which is not posted in said listing.

**58. (Original)** The business method of **claim 57** wherein said predetermined increments constraining said progressive decrease of price are a function of time.

**59. (Currently Amended)** The business method of **claim 40** wherein said prospective buyer, in specification of the type of auction, ~~may choose~~ is presented with a choice to select downward, open, unconstrained offering wherein said listing specifies an initial maximum price and offering within the time between said commencement and conclusion dates is otherwise unconstrained with regard to price.

**60. (Currently Amended)** The business method of **claim 40** wherein said prospective buyer, in specification of the type of auction, ~~may choose~~ is presented with a choice to select downward, incremental, unconstrained offering wherein said listing specifies an initial maximum price and offering within the time between said commencement and conclusion dates is otherwise unconstrained with regard to price by the progressive decrease of the same in predetermined increments.

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**61. (Original)** The business method of **claim 60** wherein said predetermined increments constraining said progressive decrease of price are a function of time.

**62. (Original)** The business method of **claim 60** wherein said predetermined increments constraining said progressive decreases of price are a function of the number of responses received.

**63. (Currently Amended)** The business method of **claim 40** wherein said prospective buyer, in specification of the type of auction, ~~may choose~~ is presented with a choice to select upward, incremental, constrained bidding wherein said listing specifies an initial minimum price and offering within the time between said commencement and conclusion dates is constrained with regard to price by the progressive increase of the same in predetermined increments and by a predetermined maximum price which is not posted in said listing.

**64. (Original)** The business method of **claim 63** wherein said predetermined increments constraining said progressive increase of price are a function of time.

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**65. (Original)** The business method of **claim 40** wherein said model of a particular commodity is provided by said prospective buyer directly to prospective sellers.

**66. (Original)** The business method of **claim 40** wherein said model of a particular commodity is provided by said prospective buyer to an auction house maintaining said web site.

**67. (Original)** The business method of **claim 66** wherein said model of a particular commodity provided by said prospective buyer to said auction house is tested by a laboratory and testing results are posted on said web site in association with said listing.

**68. (Original)** The business method of **claim 66** wherein said model of a particular commodity provided by said prospective buyer to said auction house is provided to prospective sellers by said auction house.

**69. (Currently Amended)** The business method of **claim 68** wherein said model of a particular commodity provided by said prospective buyer to said auction house is divided proportionally by said auction house in

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accordance with a number of prospective sellers each of whom is provided with a proportion of said model by said auction house.

**70. (Original)** The business method of **claim 68** wherein said model of a particular commodity provided by said prospective buyer to said auction house is comprised of a discrete number of pieces each esteemed by said auction house to possess substantially equivalent quality and prospective sellers are each provided with one said piece of said model by said auction house.

**71. (Original)** The business method of **claim 40** wherein said sample of a particular commodity is provided by said prospective seller directly to prospective buyers.

**72. (Original)** The business method of **claim 40** wherein said sample of a particular commodity is provided by said prospective seller to an auction house maintaining said web site.

**73. (Original)** The business method of **claim 72** wherein said sample of a particular commodity provided by said prospective seller to said auction

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house is tested by a laboratory and testing results are posted on said web site in association with said listing.

**74. (Original)** The business method of **claim 72** wherein said sample of a particular commodity provided by said prospective seller to said auction house is provided to prospective buyers by said auction house.

**75. (Currently Amended)** The business method of **claim 74** wherein said sample of a particular commodity provided by said prospective seller to said auction house is divided proportionally by said auction house in accordance with a number of prospective buyers each of whom is provided with a proportion of said sample by said auction house.

**76. (Original)** The business method of **claim 74** wherein said sample of a particular commodity provided by said prospective seller to said auction house is comprised of a discrete number of pieces each esteemed by said auction house to possess substantially equivalent quality and prospective buyers are each provided with one said piece of said sample by said auction house.